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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of	)	
	)	
Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996	)	CC Docket No. 96-128

To: The Commission

PETITION FOR RECONSIDERATION

PageMart Wireless, Inc. ("PageMart"), by its attorneys, hereby submits its Petition for Reconsideration ("Petition") of the Commission's Second Report and Order in the above-captioned proceeding.[1/] PageMart is a paging company that provides innovative, low-cost, nationwide services. Through contracts with various interexchange carriers ("IXCs"), PageMart subscribes to 800 and 888 numbers and provides these numbers to its customers, who may then be paged without the calling party's incurring a long distance toll charge. PageMart is therefore directly affected by the FCC's decision to allow IXCs to pass on to their customers, including paging providers, the costs incurred by IXCs in compensating payphone service providers ("PSPs") for 800/888 number calls.

1/ Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, Second Report and Order, FCC 97-371 (Oct. 9, 1997).

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PageMart participated in the proceedings on reconsideration of the Commission's first Report and Order in this proceeding.[2] Following the Commission's decision on reconsideration,[3] PageMart -- along with the Personal Communications Industry Association ("PCIA") and Paging Network, Inc. ("PageNet") -- sought review of the Commission's Payphone Orders in the U.S. Court of Appeals for the District of Columbia Circuit. The Court of Appeals consolidated these and other petitions for review in its decision to vacate and remand portions of the Payphone Orders for further consideration by the Commission.[4]

The Common Carrier Bureau asked interested parties to comment on a number of issues resulting from the Court of Appeals' remand,[5] and in response to this request, PageMart filed comments and reply comments requesting, among other things, that the Commission implement a "caller-pays" system instead of the previous "carrier-pays" mechanism.[6] In the alternative, PageMart suggested that the Commission consider the "modified caller-pays" system proposed by AirTouch

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2/ Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, Report and Order, 11 FCC Rcd. 20451 (1996).

3/ Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, Order on Reconsideration, 11 FCC Rcd. 21233 (1996) (collectively, with the original Report and Order, the "Payphone Orders").

4/ Illinois Public Telecommunications Ass'n v. FCC, 117 F.3d 555 (D.C. Cir. 1997) ("IPT").

5/ Pleading Cycle Established for Comment on Remand Issues in the Payphone Proceeding (CC Docket No. 96-128), DA 97-1673 (August 5, 1997).

6/ PageMart Comments at 3-4; PageMart Reply Comments at 2-4.

Paging, which would entail implementing a unique 8XX code for calling parties willing to pay the payphone charge for a toll-free call.[7]

In the Second Report and Order, the Commission maintained the carrier-pays system that it had adopted in the Payphone Orders, and determined that the "market rate" for coin-payphone calls is 35 cents per call.[8] Subtracting what the Commission considered to be the saved costs for coinless payphone calls (6.6 cents) from the perceived market rate, the Commission concluded that carriers should pay PSPs 28.4 cents for each toll-free call placed from a payphone.[9] In addition to its decision not to implement the caller-pays system advanced by PageMart and numerous other companies, the Commission declined to consider the alternative suggested by Airtouch.[10] PageMart now respectfully requests that the Commission reconsider these aspects of the Second Report and Order.

I. To Promote Fairness and Equity the Commission Should Implement a Measured Rate Instead of a Per Call Rate.

In the Second Report and Order the Commission imposed a 28.4 cent charge on IXCs for each subscriber 800/888 or access code call placed from a payphone. Recognizing the difference in cost between coinless calls (toll free and access code) and local coin calls, the Commission discounted the rate for coinless calls to reflect the reduced cost of such calls. The Commission, however, failed to recognize another important cost difference among 800/888 and access code calls, a

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7/ PageMart Reply Comments at 8; Airtouch Comments at 4, n.10.

8/ Second Report and Order at ¶ 29.

9/ Id. at ¶ 63.

10/ Id. at ¶ 132.

difference based on their varying durations. In acknowledging that not all payphone calls are alike in terms of cost, while ignoring one significant factor among toll-free payphone calls that also results in divergent costs for such calls, the Commission in effect treated dissimilar cases alike.

It is axiomatic that the true cost of providing a payphone call varies based on the duration of the call. Some of the factors leading to higher costs for longer calls include (i) the potential for increased line charges; (ii) wear and tear and added depreciation from extended use of payphone equipment; (iii) opportunity costs incurred with extended use; and (iv) increased commissions in connection with high-usage payphones. In addition, there are sound economic and fairness reasons for allocating larger portions of the fixed costs of payphones to calls of longer duration.[11]

The record in this proceeding also establishes notable differences in average durations between 800/888 subscriber calls and access code calls, and even among 800/888 subscriber calls. For example, the American Public Communications Council ("APCC") stated in comments filed in connection with the Payphone Orders that "[800] [s]ubscriber . . . calls in general tend to be of shorter duration than other long distance calls."[12] Most significantly, while paging companies perhaps comprise the largest group of 800/888 subscribers, calls to pagers generally last under 30

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[11] <u>See, e.g.,</u> Peoples Telephone Company Comments at 7 (arguing that it is entitled to more compensation for toll-free calls than for local coin calls because the average duration of the former is twice that of the latter).

[12] APCC Comments at 28.

seconds, compared to average call lengths of 3 to 5 minutes for most other 800/888 and access code calls.[13]

Given these disparities in average call durations for various types of toll-free calls, and therefore in the costs for completing such calls, the Commission should consider implementing a measured rate compensation system instead of the per-call framework adopted in the Second Report and Order. The per-call system implemented by the Commission unfairly burdens carriers (and ultimately paging customers, to the extent these charges are passed through) by forcing them to pay the same amount for calls that on an average are much shorter, and therefore ultimately cost less to complete. This provides an inequitable windfall for PSPs, and a virtual subsidy for carriers/customers with respect to longer calls. Such a per-call system also produces a stronger incentive for 800/888 paging customers than for others to block payphone calls, because paging customers' per-second costs for accepting such calls would be considerably higher than the amount paid by others.

A measured rate based on a reasonable increment of use, on the other hand, would reflect the vast differences in lengths and attendant costs between paging and other toll-free calls, and would therefore cure the discriminatory effect of the per-call scheme adopted by the Commission. Because toll-free subscribers generally pay for service in 6-second increments,[14] the Commission should consider implementing a charge based on this unit of measurement. The Commission could ascertain the average number of all toll-free calls, and, by applying this average to the "market

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13/ See PageNet Reply Comments at 12-14.

14/ See PageNet Comments at 16.

rate" for coinless payphone calls, determine the appropriate charge for each six-second increment.[15]

II. The Commission Should Revisit the Carrier-Pays Regime and Institute a Calling Party Pays Mechanism.

In vacating portions of the Commission's Payphone Orders, the Court of Appeals declined to reject the requirement that carriers pay PSPs the "market rate" for payphone calls, finding that "carriers have some leverage 'to negotiate for lower per-call compensation amounts' in that they can block calls from particular phones charging excessive rates."[16] In the Second Report and Order the Commission readopted the carrier-pays scheme without considering the comments submitted by the parties to the proceeding regarding the viability of call blocking, deciding instead that "[t]o the extent that we decide to revisit any of these issues, such review will be addressed in a subsequent proceeding."[17] Given the critical questions that were raised with respect to the Commission's carrier-pays scheme, however, the Commission was required, despite the Court of Appeals' acceptance of that model from a legal standpoint, to reconsider whether a caller-pays system would better serve the public interest.

Assuming, without conceding, that call blocking is indeed an available and viable option, PageMart submits that a caller-pays framework continues to be the most equitable and economically prudent system for compensating PSPs. A caller-

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15/ For example, if the average toll-free call lasts 5 minutes, then, based on a 28.4 cent market rate for coinless calls, the charge for each 6 second increment of such a call would be 0.57 cents.

16/ IPT, 117 F.3d at 567.

17/ Second Report and Order at ¶ 132.

pays system would better serve the public interest by providing several crucial advantages over the existing carrier-pays system. First, a caller-pays system would more quickly establish the true market rate for payphone calls by allowing callers to make decisions in individual instances whether to accept a particular rate; under the carrier-pays system a customer may only block payphone calls entirely, thus establishing the competitive market rate over a longer period.

Second, a caller-pays framework would be considerably less burdensome and costly than the carrier-pays model. A carrier-pays system imposes burdens related to collection and administration on IXCs, IXC customers, 800 subscribers, and local exchange carriers ("LECs"). Such a burdensome regulatory regime contradicts the spirit of the Telecommunications Act of 1996, particularly in light of the considerably simpler caller-pays alternative.

Third, a caller-pays system would equitably spread the burden of toll-free payphone calls among both of the primary beneficiaries of such calls. Under such a system, the caller would pay for the use of the payphone; this is the component of the call that primarily benefits the caller, who is paying for the use of a readily available telephone. The called party would then pay the long distance toll for the call; this is the call component of benefit primarily to the called party, who has already agreed to ensure that callers incur no toll, but has no interest in whether or not the call is placed from a payphone.

In addition to the advantages provided by a caller-pays system, it is clear that a carrier-pays system will not serve the public interest. As the Commission and the Court have recognized, a toll-free subscriber's only option with respect to unwanted calls will be to block all calls from payphones. Countless subscribers will proceed to implement call blocking in this wholesale manner in order to avoid excessive charges for fraudulent, frivolous, or unnecessary payphone calls, to the detriment of potential callers from payphones with a strong, legitimate need to reach a blocked number.

Numerous subscribers will be forced to block all payphone calls, including calls the subscriber would be willing to pay for and calls from individuals willing to pay for the use of the payphone. This all-or-nothing approach will lead to market distortions by making toll-free calling from payphones in many instances unavailable to those willing to pay for it. Ultimately, the inconvenience to transient callers, who would have to produce a quarter under a caller-pays system, will pale in comparison to the injury wrought under the Commission's carriers-pays framework to travelers and others in dire need of placing, and willing to pay whatever is required for, a payphone call to a toll-free number.

III. The Commission Should Move to Adopt the Framework Originally Framed by AirTouch for Special 8XX Codes.

One possible solution to the problems discussed above would be for the Commission to implement a "modified caller-pays" system, as proposed by AirTouch and supported by PageMart in this proceeding.[18/] Under this system, the Commission would retain the existing 800/888 codes, and allow carriers to pay the payphone charges or block payphone calls with respect to the these codes. The Commission would then add a new 8XX code for callers willing to pay for calls to blocked or unblocked numbers. This system would help eliminate some of the market distortions associated with the existing framework by allowing much needed calls to blocked

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[18/] AirTouch Comments at 4, n.10; PageMart Reply Comments at 8.

numbers, and by giving carriers and their toll-free subscribers added flexibility with respect to accepting, rejecting, or paying for payphone calls. Such a system would be easy to administer, and would serve the public interest by providing benefits for all of the parties involved.

IV. Conclusion

In order to preserve equity and promote a competitive market for all telecommunications services, the Commission should reconsider its Second Report and Order by implementing a measured rate for payphone compensation, and by instituting a caller-pays scheme or a system whereby callers willing to pay for payphone calls may do so. To the extent that the Commission does not consider these issues ripe for reconsideration at this time, given the significance of these issues and the harms being caused to 800/888 subscribers and willing payphone callers under the existing framework, the Commission should proceed immediately to initiate a proceeding to address these important issues.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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